

राष्ट्रीय राजमार्ग एवं अवसंरचना विकास निगम लिमिटेड

सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार
तीसरी मंजिल, पीटीआई बिल्डिंग, 4-संसद मार्ग, नई दिल्ली-110001

National Highways & Infrastructure Development Corporation Limited

Ministry of Road Transport & Highways, Govt. of India
3rd Floor, PTI Building, 4-Parliament Street, New Delhi-110001, +91 11 23461600, www.nhidcl.com



(भारत सरकार का उद्यम)

(A Government of India Enterprise)

Without Prejudice

NHIDCL/MTM-IV/2022-23/ 1500

Dated: 12.01.2023

To,

M/s MD Enterprise,
Zero Point Tinali, P.O: Itanagar,
& P.S: Itanagar, Dist: Papum Pare,
Arunachal Pradesh

[Kind Attention : Sh Tanan Jamoh, Authorised Signatory]

Sub: "Balance Work of Construction of two-lane with hard shoulders of **Merangkong-Tamlu-Mon** road on EPC basis from existing Km 76.640 to Km 98.065 (Design Km 63.800 to 86.835) (Design Length 23.035 Km) (**Pkg.-IV**) in the state of Nagaland under SARDP-NE Phase-A"- **Declaring the EPC Contractor as Non-Performer - Reg.**

Ref: -(i) Letter of Acceptance (LOA) - NHIDCL, HQ Letter No - NHIDCL/Nagaland/Civil Work/MTM/Pkg 4/2021/1021, dated- 09.09.2021

(ii) Contract Agreement, dated -18.11.2021

(iii) Joint Memorandum & Inventory, dated - 07.12.2021

(iv) Appointed Date - NHIDCL, HQ Letter No - NHIDCL//Civil Work/MTM/Pkg 4/2021-22/1084, dated - 21.12.2021

(v) PMU Mokokchung letter No. - NHIDCL/PMU-MKG/MTM/BW-PKG-IV/2021-2022/02, dated - 06.01.2022 reg. *Submission of Work Programme directions to EPC Contractor*

(vi) Authority's Engineer Letter No. - ALMD-MA/MTM/PKG-IV/2021-2022/15, dated - 31.01.2022 reg. *Submission of P&P, Design and Drawing of Culverts, Protection work & Drain direction to EPC Contractor*

(vii) PMU Mokokchung letter No. - NHIDCL/PMU-MKG/MTM/BW-PKG-IV/2021-2022/03, dated - 01.02.2022 reg. *Submission of P&P, Design and Drawing of Culverts, Protection work & Drain direction to EPC Contractor*

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- (ix) PMU Mokokchung Letter No. - NHIDCL/PMU-MKG/MTM-PKG-IV/2021-2022/04, dated - 24.02.2022 reg. *New utilities being erected at site*
- (x) EPC Contractor Letter No. - MDE/SO/NHIDCL/MTM-IV/41, dated - 12.03.2022 reg. *Submission of Work Programme -*
- (xi) Authority's Engineer Letter No. - ALMD-MA/MTM/PKG-IV/2021-2022/24, dated - 15.03.2022 reg. *Maintenance of Existing Road Highway during Construction Period -*
- (xii) Authority's Engineer Letter No. - ALMD-MA/MTM/PKG-IV/2021-2022/25, dated - 15.03.2022 reg. *Manpower and Machinery.*
- (xiii) PMU Mokokchung Letter No. - NHIDCL/PMU-MKG/MTM/PKG-IV/2021-2022/05, dated - 26.03.2022 reg. *Manpower and Machinery -*
- (xiv) Deputy Commissioner Letter No.- GA/MON/LR-08/NH/2020/278, dated - 26.03.2022 reg. *Request for immediate Restoration/ repair of Bailey Bridge at Leangnyu Village under MTM Road*
- (xv) PMU Mokokchung Letter No. - NHIDCL/PMU-MKG/MTM-PKG-IV/2021-2022/06, dated - 26.03.2022 reg. *Request for immediate Restoration/ repair of Bailey Bridge at Leangnyu Village under MTM Road*
- (xvi) PMU Mokokchung Letter No. - NHIDCL/PMU-MKG/MTM/PKG-IV BW/2022-2023/07, dated -05.04.2022 reg. *Maintenance of Existing Road Highway during Construction Period*
- (xvii) PMU Mokokchung letter No. - NHIDCL/PMU-MKG/MTM/PKG-IV BW/2022-2023/09, dated - 04.05.2022 reg. *Cure Notice under clause 23.1 of the Contract Agreement*
- (xviii) Authority's Engineer Letter No - ALMD-MA/MTM/PKG-IV/2022-23/40, dated - 24.05.2022 reg. *Maintenance during Construction period*
- (xix) PMU Mokokchung Letter No. - NHIDCL/PMU-MKG/MTM/PKG-IV BW/2022-2023/14, dated - 22.07.2022 reg. *Notice to declare the EPC Contractor as non-performer due to slow progress and poor planning of work.*
- (xx) EPC Contractor letter no- MDE/SO/NHIDCL/MTM-IV/92, dated - 27.07.2022 reg. *reply of EPC Contractor against Notice to declare the EPC Contractor as non-performer due to slow progress and poor planning of work.*
- (xxi) Authority's Engineer Letter No - ALMD-MA/MTM/PMU/2022-23/815, dated - 03.09.2022 reg. *Recommendation for declaring the EPC Contractor as Non-Performer*
- (xxii) GM(P), PMU Mokokchung letter no. NHIDCL/PMU-MKG/MTM/Pkg-IV/2022-23/18 dated 06.09.2022 reg. *Recommendation for declaring the EPC Contractor as Non-Performer*

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Sir,

NHIDCL (National Highways & Infrastructure Development Construction Limited) and **M/s MD Enterprise** (Hereinafter referred to as "the EPC Contractor") signed an EPC Agreement on the **18th November, 2021** for the work of "Balance Work of Construction of two-lane with hard shoulders of Merangkong -Tamlu-Mon road on EPC basis from existing Km 76.640 to Km 98.065 (Design Km 63.800 to 86.835) (Design Length 23.035 Km) in the State of Nagaland under SARDP-NE Phase-A" at the Contract Price of **Rs. 103,78,40,000/- (Rupees One Hundred & Three Crores, Seventy-Eight Lakhs Forty Thousand)** only excluding GST, with construction period of 18 (Eighteen) months commencing from the Appointed Date w.e.f. the **09th December, 2021** on the terms, conditions and covenants contained in the Contract Agreement.

2. Whereas, as per Clause 10.3.1 of EPC Contract Agreement, the EPC Contractor shall construct the Project Highway as specified in Schedule-B and Schedule-C, in conformity with the Specifications and Standards set forth in Schedule-D, within 549 Days (Five Hundred and Forty-Nine Days) i.e. the 10th June, 2023 from the Appointed Date (i.e., 09th December, 2021).

Sl. No.	Project Milestones	Milestone Appointed Date as per the Agreement (days)	from Contract (in days)	Stipulated Financial Progress as per Contract Agreement	Stipulated Completion Date as per Contract Agreement	Actual date of Achievement
i.	Milestone – I	192		10%	18.06.2022	Not yet achieved (Phy. Prog. till 02.01.2023 is 6.65%)
ii.	Milestone – II	329		35 %	02.11.2022	-
iii.	Milestone – III	467		70 %	20.03.2023	-
iv.	Scheduled Completion Date	549		100%	10.06.2023	-

3. Whereas, the EPC Contractor has failed to achieve required progress for the reasons solely attributable to them majorly due to insufficient funding to project site, resulting in delay in procurement of construction materials, lack of meticulous planning, lack of mobilization of key construction equipment/manpower etc. The EPC Contractor has achieved **Physical Progress of 6.65 % (as per MPR) as on 02.01.2023**. The above defaults clearly attract provisions in accordance with the MoRTH Circular no. RW/NH-33044/76/2021 S&R (P&B), dated 06.10.2021, para (2), table (1), Sl. (1) & (2) under "Failed to set up institutional mechanism and procedure as per Contract" and "Failed to complete or has missed any milestone and progress not

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commensurate with contiguous unencumbered project length/ ROW available even after lapse of 6 months from respective project milestone/ Schedule Completion date”.

The month wise details of submitted work program (as per Schedule-J) vis-à-vis the physical progress achieved by M/s M D Enterprise since the Appointed Date (i.e., 09th December, 2021) are tabulated as under;

Sl. No	Month	Cumulative Physical Progress as per submitted work program (%)	Actual Cumulative Physical Progress (%)
1	December'2021	0.00	0
2	January'2022	0.00	0
3	February'2022	0.00	0
4	March'2022	1.96	0
5	April'2022	10.48	0
6	May'2022	20.21	0
7	June'2022	25.66	0
8	July'2022	30.11	1.97
9	August'2022	34.28	4.36
10	September'2022	39.59	4.37
11	October'2022	49.74	5.90
12	November '2022	60.48	6.45
13	December'2022	70.87	6.62
14	January'2023	79.87	6.65
15	February'2023	87.74	-
16	March'2023	93.57	-
17	April'2023	96.94	-
18	May'2023	99.21	-
19	June'2023	100.00	-

4. Whereas, the Authority had issued Cure notice for slow progress for expediting the progress of work, wherein the EPC Contractor was advised to mobilize adequate manpower, machineries and ensure procurement of materials at site to achieve the Milestone targets. Despite repeated instructions issued in this regard, the EPC Contractor failed to take corrective steps for expediting the progress of work and has not submitted any reply to the said cure notice and clearly attracts provisions in accordance with the ibid MoRTH Circular para (2), table (1), Sl. (2) under “Failed to complete or has missed any milestone and progress not commensurate with contiguous unencumbered project length/ ROW available even after lapse of 6 months from respective project milestone/ Schedule Completion date”.
5. Whereas, as per Clause 10.4 of CA, *“During construction period, the Contractor shall maintain, at its costs, the existing lane(s) of the Project Highway so that the traffic worthiness and safety thereof are at no time materially inferior as compared to their condition on Appointed Date, and shall undertake the necessary repair and maintenance works for this purpose”.* The Authority’

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Engineer has issued notice to the EPC Contractor for maintenance during the Construction Period. However, the EPC Contractor has failed to maintain the existing road as per its obligations till date and certainly attracts provisions in accordance with the ibid MoRTH Circular para (2), table (1), Sl. (1) under "Failed to set up institutional mechanism and procedure as per Contract".

6. Whereas, as per Cl. 10.2 of the Contract Agreement, the EPC Contractor has failed to submit the design & drawings in conformity with standard and specifications set forth in Schedule-D completely and has not submitted required documents of design mix etc. to the Authority's Engineer till date i.e. after lapse of more than six months from the Appointed Date. Hence, the EPC Contractor has again failed to follow its obligations stipulated under the EPC Contract Agreement. The above defaults certainly attract provisions in accordance with the ibid MoRTH Circular para (2), table (1), Sl. (1) under "Failed to set up institutional mechanism and procedure as per Contract".
7. Whereas, EPC Contractor has not followed good industry practices which are inherent in the Contract Agreement and reflected in poor quality of work.
8. Whereas, the above facts of omission and commission have resulted in immense inconveniences to the public since the said project is crucial as well as has strategic importance.
9. Whereas, the EPC Contractor has neither submitted a revised realistic work programme to complete the balance work nor made any proper planning for procurement of construction materials, Machineries, and other ancillary items in order to complete the project in the specific period of time, which has resulted in loss of valuable project time and clearly attracts provisions in accordance with the ibid MoRTH Circular para (2), table (1), Sl. (1) & (2) under "Failed to set up institutional mechanism and procedure as per Contract" and has "Failed to complete or has missed any milestone and progress not commensurate with contiguous unencumbered project length/ ROW available even after lapse of 6 months from respective project milestone/ Schedule Completion date".
10. Whereas, Authority has extended all possible support to expedite the progress of the project. But the EPC Contractor has shown no intention to execute the project as per the Contract Agreement.
11. Hence, the EPC Contractor has caused the breach of to the following clauses of the Ministry Circular no. RW/NH-33044/76/2021 S&R (P&B), dated 06.10.2021;
 - i. Failed to set up institutional mechanism and procedure as per Contract.
 - ii. Failed to complete or has missed any milestone and progress not commensurate with contiguous unencumbered project length/ ROW available even after lapse of 6 months from respective project milestone/ Schedule Completion dated.
12. Whereas, Authority vide letter under ref. (xix) has issued Show Cause Notice to declare the EPC Contractor as non-performer with a request to justify the above defaults. The reply furnished by the EPC Contractor was not found justified and therefore cannot be taken into consideration.
13. HOWEVER, in view of the aforesaid facts and circumstances, it is clearly evident that the EPC Contractor has failed to uphold its contractual obligations

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as per the Contract Agreement and has caused detrimental effect on the projects under it. In light of the aforesaid facts and circumstances, considering the non-professional attitude of M/s MD Enterprise, and aforesaid contractual defaults, breaches, and willful non-performance in fulfillment of Contractor's obligations as per the provisions of the Contract Agreement and blaming the Authority for its own accountabilities, the National Highways & Infrastructure Development Corporation Limited is hereby declaring the EPC Contractor M/s MD Enterprise as Non-Performer for a period of six months or till the rectification of the deficiency whichever is later in National Highways and centrally sponsored road projects as per MORT&H Circular No. RW/NH-33044/76/2021-S&R (P&B), dated 06.10.2021.

14. The Authority is declaring the EPC Contractor, M/s MD Enterprise as Non-Performer as per Para-8 of MORT&H Circular dated 06.10.2021. Upon Declaration of Non-Performer, the EPC Contractor will not be able to participate in any bid with MORT&H or its executing agencies, till such time the EPC Contractor is removed from the list of non-performers or debarment persists.
15. This order is issued without prejudice to any other right or remedy available with the Authority under the Contract Agreement and applicable law.
16. This issues with approval of the Competent Authority.

Yours Sincerely

M Riten Kumar Singh
Executive Director, NHIDCL

Copy to:

- i. PS to Director(T), NHIDCL, HQ
- ii. ED(T/Ps), NHIDCL
- iii. GM(P)- PMU Mokokchung
- iv. GM (IT), HQ- NHIDCL, for necessary action.